

REMARKS

The Office is requested to consider the following remarks when further evaluating the patentability of the claims as presented herein.

Claim Amendments

Applicant requests the amendments set forth above be entered in the present application.

Claims 1-26 are amended herein to address the grammatical and idiomatic problems throughout as a result of literal translation of the claims from German.

Claim 15 is canceled without disclaimer or prejudice to the subject matter contained therein.

Claim 10 is amended to depend solely from claim 1.

Claims 11 and 12 are amended to depend from claim 1 rather than claim 8, thus broadening their scope.

Claim 16 is amended to depend from claim 14 rather than claim 15, thus broadening its scope.

In addition, claim 13 is amended to depend from claim 1. (The amendment of the dependency of either claim 10 or claim 13 addresses the improper multiple dependency of claim 13 as originally presented.)

Oath/Declaration Objection

The Office action indicates the oath or declaration is defective, ostensibly for failure to identify the application by application number and filing date. Applicant is unable to determine the basis for the objection. Pursuant to 35 U.S.C. § 363, an international application designating the U.S. has the effect of a national application filed in the U.S. as of the international filing date. The declaration as filed includes a reference to international application no. PCT/EP99/02774 and its filing date. In fact, form PTO/SB/01 for Declaration – Utility or Design Patent Application explicitly indicates that the PCT International Application No. is an acceptable application number to place on the declaration. M.P.E.P § 602 also provides under the heading “Identification of the Application” that the requirement that the declaration “adequately identify the specification” is met by including on it the name of the inventor and either an attorney docket number or the title of the invention on the specification as filed. The declaration as filed in response to a Missing Requirements Notice under 35 U.S.C. § 371 included all three pieces of

information, i.e., inventor, docket number, and title. Because the application was not considered complete, the Office did not accord a filing date to the application until the response to the Missing Requirements notice was filed. Even if the declaration were considered to have been filed after the filing date, M.P.E.P. 602 further provides the identification requirement is fulfilled by a declaration filed after the filing date if the declaration is filed with the title of the invention on the specification as filed and is accompanied by a cover letter identifying the application number. This requirement was likewise fulfilled at the time the declaration was filed as a cover letter with the application number was enclosed.

The declaration was further deemed defective because “there is an unsigned power of attorney document in the file.” Applicant is uncertain what is meant by this objection. The existence of a power of attorney document in the file has no bearing on the adequacy of a declaration by the inventor.

In attempting to address the concerns of the Office, Applicant did, however, recall that the declaration as submitted was signed by Mathias Dorn, the administrator of the inventor’s insolvency estate, and not the inventor himself. The declaration was filed in this manner in reliance on 35 U.S.C. § 117 and 37 C.F.R. § 1.43 on the grounds that the inventor was and is legally incapacitated. In the event that this is not acceptable to the Office, Applicant filed a Petition to Accept Declaration – Legally Incapacitated Inventor (37 C.F.R. §1.43) or in the Alternative, Petition to Accept Unexecuted Declaration – Inventor Refusal to Sign (37 C.F.R. §1.47(b)) on 20 February 2004. Applicant believes this petition in the alternative should address any outstanding concerns of the Office.

Drawing Objections Under 37 C.F.R. § 1.83(a)

The drawings are objected to under 37 C.F.R. § 1.83(a) as failing to show every feature of the invention claimed. Particularly, it is asserted that the drawings fail to show the method of outputting and transferring a bale as claimed in claim 9. A further objection asserted is that the drawings do not adequately show the method claimed in claims 1-13.

Proposed amendments to the drawings are presented in the attached marked-up copies of new figures Figs. 3a and 3b and a new sheet. Sheet 1 proposes a new Fig. 3c to depict the cutting of the film web, transverse to the direction of the film web, before the advent of the film rope, which is used to start the wrapping of a new bale. the wrapping of the round bale with a film rope. Sheet 2 proposes a new Fig. 3d to show the finished product and the film rope ready

and awaiting a new bale. Sheet 3 indicates amendments to original Fig. 3c indicating the widening of the rope forming arms. Sheet 4 proposes a new Fig. 4 depicting the twisting of the film into a film rope. Sheet 5 proposes a new Fig. 5 depicting an exemplary embodiment of outputting a bale to a wrapping table and the finished product.

Applicant believes these drawing amendments adequately address the objections raised in the Office action. In particular, Applicant believes that the drawing of sheet 5 adequately addresses the objections expressed with respect to claim 9. No new matter is presented in these amendments as they merely provide supporting schematic representations of the methods described in the original specification. Upon acceptance of these proposed amendments by the Office, Applicant will provide formal drawings for publication purposes and make any necessary amendments to the specification to accommodate description of the proposed new drawings.

Claim Rejections Under 35 U.S.C. § 112

Claims 1-26 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims as presented were a literal translation from the original German. The claims are amended herein to address the grammatical and idiomatic concerns raised in the Office action. Applicant believes the amendments to these claims as presented herein fully address the concerns raised in the Office action.

Claims 13 is also amended to clarify the elements of the claim.

Claim Rejections Under 35 U.S.C. § 103

Before responding to the rejections in the Office action directly, it is instructive to review the nature of the invention and the problem it was designed to address. In the prior art, round bales of materials, for example, and agricultural products or refuse, are initially wrapped with a net or yarn. They are then output from the baler for additional wrapping for transport. It may be undesirable to use nets or yarn because materials can fall out of the openings in the net before it is finally wrapped. Further, multiple wrapping materials must be maintained in inventory.

While it has been attempted to wrap a bale initially in the baler with an adhesive film, it is difficult to insert the adhesive film into the baler to initiate the wrapping process as a wide web of the film sticks to the pinch rollers. By gathering the film web together across its lateral width to create a narrow film rope according to the present invention, the film is less likely to stick to a roller and is easily insertable into the baler to begin the wrapping process. Novel pinching arms

are disclosed as part of the invention to gather the film. The pinching arms may further be rotated to twist the film rope, thereby increasing the strength of the film rope. Once the film rope is engaged with the bale, the pinch arms can be released to allow the film to widen and return to the normal web width. The bale is then wrapped a sufficient amount (as few as two wraps) to hold the bale together for short distance transfer to a wrapping table where the bale can be further wrapped for transport or storage. The wrapping table wrap can be at 90 degrees to the original wrap within the baler to increase the strength of the wrap.

Claims 1, 2, 4-8, 10-12, 14-16, 18-20, 24, and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,079,898 to Springs et al. in view of U.S. Patent No. 5,311,729 to Viaud. Initially applicant notes that claim 15 is canceled herein. The Office action states that all of the claimed steps of claim 1 and all of the elements of claim 14 are taught by Springs et al. with the exception of pulling the film off the film roll with a film pulling-off device and the film pulling-off device, respectively. In fact, in Springs et al. it is the round bale itself rolling in the bale press that pulls the film from the film roll. (See col. 12, ll. 32-37.) The basis for the obviousness rejection is that Viaud teaches the art of pulling a film web off a film roll using a film pulling device with a baler. However, Viaud nowhere suggests the ability to use an adhesive film to wrap the bales in the baler. Further Viaud does not teach the support of a film roll on a plurality of rollers in contact with and supporting the cylindrical surface of the film roll. There is no teaching or suggestion in Springs et al. or in Viaud of the benefit of combining a film rope making mechanism with a film pulling device and certainly no suggestion that such a combination would address the problems raised when using an adhesive film.

In fact as indicated in the discussion immediately above and in the specification, there is likely a reason that such a combination is not suggested. Although there are distinct advantages in using a film pulling device, for example, to maintain a constant and consistent feed rate of the film web from the film roll, there are significant problems when attempting to do so. As described in the summary "Representation" of the present application, the adhesive nature of the film web causes it to stick to the feed rollers of a standard pulling device and prevents it from feeding into the baler. Thus the prior art actually teaches away from the combination of a film pulling off device when using adhesive film with a baler.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the

knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). M.P.E.P. § 2142.

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. M.P.E.P. § 2143. The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art, not in applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). *Id.*

The claimed invention describes a novel combination not suggested in the prior art. The knowledge of one of ordinary skill at the time of the invention would not have suggested using a film pulling device when using an adhesive film. As the present specification describes the state of the art at the time of the invention, such a combination was inoperable. Further, as acknowledged in the Office action, Springs et al. does not teach or suggest the use of a film pulling device with the film rope making apparatus disclosed therein. Further, Viaud does not teach the support of a film roll on a plurality of rollers in contact with and supporting the cylindrical surface of the film roll. Therefore, claims 1 and 14 are not obvious in view of the prior art combination. Further, as claims 2, 4-8, and 10-12 depend from claim 1 and as claims 15, 16, 18-20, 24 and 25 depend from claim 14, the rejection of these claims as obvious is inappropriate as well. Applicant therefore requests the rejection of claims 1, 2, 4-8, 10-12, 14, 16, 18-20, 24, and 25, as amended be revoked.

Claims 3 and 23 are further rejected under 35 U.S.C. 103(a) as being unpatentable over Springs et al. in view of Viaud and in further view of U.S. Patent No. 4,468,922 to McCrady et al. McCrady et al. discloses an apparatus for spinning textile fibers into thread using an electrostatic process. A rotating electrode spins fibers issuing from an alignment card through bore in the electrode into a yarn. There is no teaching or suggestion in McCrady et al. that such a

fiber twisting device could be translated for use to twisting a large plastic web, much less any suggestion that it could be used in conjunction with agricultural or waste industry round bale presses. In actuality, such a device would be likely be inoperable to twist a plastic web. The rejection of claims 3 and 23 on the basis of the combination of Springs et al., Viaud, and McCrady et al. is therefore inappropriate. Applicant requests withdrawal of this rejection.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Springs et al. in view of Viaud and in further view of U.S. Patent No. 4,826,551 to Ingram. For the reasons set forth in the discussion with respect to claims 1 and 14, as the combination of Springs et al. and Viaud does not teach or suggest the invention of claim 14, the further combination of Ingram fails to render claim 17 obvious. Therefore, withdrawal of the rejection is requested.

Claims 21 and 22 are rejected under 35 U.S.C. 103(a) as being unpatentable over Springs et al. in view of Viaud and in further view of U.S. Patent No. 4,807,427 to Casteel. The Office action seems to misunderstand the wording of claims 21 and 22. For the reasons set forth in the discussion with respect to claims 1 and 14, as the combination of Springs et al. and Viaud does not teach or suggest the invention of claim 14, the further combination of Casteel fails to render claim 17 obvious. Therefore, withdrawal of the rejection is requested.

Claim 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,784,856 to Altwater et al. in view of Springs et al. and in further view of Viaud. For the reasons set forth in the discussion with respect to claims 1 and 14, as the combination of Springs et al. and Viaud does not teach or suggest the invention of claim 14, the further combination of Altwater fails to render claim 26 obvious. Therefore, withdrawal of the rejection is requested.

Information Disclosure Statements

Applicant filed an information disclosure statement (IDS) on 24 October 2002. However, there was no indication in the present Office action that this IDS was considered by the Office. Applicant therefore requests the Office acknowledge its review of the 24 October 2002 IDS in the next action. If the Office cannot locate of this ID, Applicant is happy to provide a copy to the Office.

Conclusion

For the reasons stated in the remarks above, Applicant believes that the rejections of the claims as obvious are inappropriate and requests that such rejections be withdrawn. Applicant

believes the amendments and new claims herein place the application in condition for allowance and respectfully requests consideration of and speedy issuance of the pending claims.

A petition for a three month extension of time to respond to the Office action is included herewith.

Respectfully submitted this 24 day of February 2004.



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